

**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WISCONSIN**

NATIONAL WILDLIFE REFUGE ASSOCIATION, et
al.,

Plaintiffs,

vs.

RURAL UTILITIES SERVICE, et al.,

Federal Defendants,

and

ITC MIDWEST LLC, and DAIRYLAND POWER
COOPERATIVE,

Intervenor-Defendants.

Case No. 3:24-cv-0139

**INTERVENOR-DEFENDANTS' JOINDER IN FEDERAL DEFENDANTS'
RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Intervenor-Defendants ITC Midwest LLC and Dairyland Power Cooperative (collectively, the "Utilities") join Federal Defendants' Response to Plaintiffs' Notice of Supplemental Authority, ECF No. 186, filed August 28, 2024. The Utilities concur in Federal Defendants' position and reasoning as asserted in the Response. *See generally* ECF No. 186.

As Federal Defendants correctly note, *City of Port Isabel v. Federal Energy Regulatory Commission* involves distinguishable facts and claims and thus provides no support for Plaintiffs' position regarding the opportunity for public comments under NEPA. No. 23-1174, 2024 WL 3659344 (D.C. Cir. Aug. 6, 2024); ECF No. 186, at 2. In *City of Port Isabel*, the D.C. Circuit held that the Federal Energy Regulatory Commission's "entirely new analysis," which was "substantially different" from the prior analysis, necessitated the preparation of a supplemental Environmental Impact Statement ("EIS") to examine "significant new circumstances . . . not already considered." 2024 WL 3659344, at *5. By contrast, here, the scope, impacts, and analytical methods of the project have remained substantially the same since the beginning of the NEPA

process. Over the course of eight years, Federal Defendants published a Draft and Final EIS, as well as an Environmental Assessment (“EA”) and Supplemental Environmental Assessment (“SEA”) and provided Plaintiffs with over 270 days to submit public comments since the start of the NEPA process.¹

For the reasons set forth in Federal Defendants’ Response, the Court should disregard Plaintiffs’ Notice of Supplemental Authority.

DATED: August 30, 2024

¹ Beyond the 146-day public comment period provided for the Draft and Final EIS that Federal Defendants note in the Response, ECF No. 186, at 2, there was also an 81-day comment period during scoping, a 30-day comment period for the Draft EA, and a 14-day comment period for the Draft SEA. *See* ROD004942–4944, ROD004998–5000, ROD005001–5002, ROD007644–7645, FWS-AR-0005027–5029.

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